

## REMARKS

In response to the Office Action dated May 20, 2008, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the following comments. By way of summary, Claims 18-28, 73, 74, and 76-85 remain pending. Claims 18-20, 74, and 82-84 have been amended.

### Claims 18-21, 23-28, 73, 74, and 76-85 Are In Condition for Allowance

Claims 18-21, 23-28, 73, 74, and 76-85 presently stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ekholmer. While Applicants believe that all pending claims are patentable in their prior form, certain claims have been amended in an effort to expedite allowance of the application.

Claims 18 and 73 recite, *inter alia*, a catheter comprising a porous membrane wrapped around a support, the porous membrane being saturated by fluid introduced through a proximal end of the catheter, the fluid then exiting the catheter through the porous membrane at a rate determined by a rate of diffusion of fluid through the porous membrane. In clear contrast, Ekholmer discloses a non-porous tube 6 that includes a section having exit holes 4 passing therethrough.

Additionally, Applicant notes that Claims 18 and 73 require that the porous membrane is a separate member from the non-porous membrane. The Examiner argues that it would have been obvious to one of ordinary skill in the art to make the porous and non-porous sections separate, citing *Nerwin v. Erlichman*, 168 USPQ 177, for the proposition that constructing a formerly integral structure in various elements involves only routine skill in the art. Applicant notes, however, that the cited case did not involve a question of obviousness. It instead concerned an interference count's alleged lack of support where only a single-element structure could be used to meet "two positively stated and separately claimed count elements." *Id.* at 178-179. Thus, Applicants submit that *Nerwin* does not hold that constructing a formerly integral structure in various elements only involves routine skill. Applicant also notes that § 2144.04(V)(B) of the M.P.E.P. appears to contradict the Examiner's attempted assertion of a *per se* rule of obviousness vis-à-vis integral structures versus structures constructed from various elements.

Moreover, Claims 18 and 73 require not only separate membranes, but membranes having separate properties, i.e., porous versus non-porous. Thus, claimed catheter involves more than simply the prior art integral catheter divided into separate elements. The Examiner has not provided any other rationale for why an ordinarily-skilled artisan considering the catheter of Ekholmer would find it obvious to make the non-infusion and infusion sections separate and, furthermore, from different materials having different properties.

Accordingly, it is submitted that the rejections to Claims 18 and 73 should be withdrawn. Claims 19-28, 74, and 76-81 are allowable, not only because they depend from one of allowable Claims 18 and 73, but upon their own merit as well.

Claim 82 recites, *inter alia*, a porous tubular membrane completely surrounding a portion of a support's length and a "dome-shaped end portion that is integrally formed with said support, said end portion clos[ing] a distal end of each of said lumens." Applicant again submits for reasons similar to those outlined above, that the cited reference does not disclose or render obvious the catheter of Claim 82. Applicant further submits that the reference does not disclose or render obvious a dome-shaped end portion integrally formed with a support. In clear contrast, the end portion of the Ekholmer catheter appears to be defined by the outer member. Indeed, while the Examiner cites Figure 3 as disclosing a "dome-shaped end portion," the Examiner fails to explain how the reference discloses or renders obvious a dome-shaped end portion *integrally formed with the support*.

Accordingly, it is submitted that Claim 82 is in condition for allowance. Claims 83-85 are allowable, not only because they depend from allowable Claim 82, but upon their own merit as well.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present

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disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

#### CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.


The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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